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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,612	07/16/2003	Vincent De Laforcade	05725.1226-00000	6532
22852	7590	09/03/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	
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			09/03/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,612

Applicant(s)

DE LAFORCADE ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 2, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/23/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1,2,6,9,10,12,13,16,18-23,39,41,44-48,50,52,54,56-62,64,65,68,69,71,72,76 and 78-83.

DETAILED ACTION

Applicant's Amendment filed 4/23/08 has been entered and carefully considered. Claims 1, 3, 6, 39, 41, 44-46, 62, 64 and 76 have been amended. Claims 2, 4, 5, 7, 8, 11, 14, 15, 17, 40, 42, 43, 49, 51, 53, 55, 63, 66, 67, 70, 73-75, 77, 84-110 have been canceled. Limitations of amended claims have not been found to be patentable over newly submitted prior art in the IDS filed 4/23/08, therefore, claims 1, 2, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83 are rejected under the new ground rejection as set forth below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 9, 10, 12, 13, 16, 18-23, 39, 41, 44-48, 50, 52, 54, 56-62, 64, 65, 68, 69, 71, 72, 76, 78-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuzuhara in view of Furusawa (IDS cited reference JP2001-158464).

With regard to claims 1, 6, 12, 13, 16, 39, 44, 50, 52, 54, 62, 65, 72, 76, Yuzuhara discloses a single piece applicator nozzle (8) comprising attachment portion (at 62) configured to attached the nozzle to a receptacle (4) containing a product, an arrangement of at least four teeth (102) disposed in at least one row (see fig. 1) comprising first and second end teeth (102b, 102c), at least two intermediate teeth

(102b, 102c) defining a channel (114) extending lengthwise along the intermediate teeth and being configured to be placed in flow communication with product contained in the receptacle, the two intermediate teeth being between the first and second end teeth, the channel opening on an exterior of the at least one tooth (at 116, fig. 4). Yuzuhara also discloses the end teeth (102a, fig. 3) being solid devoid of outlet apertures. Yuzuhara further discloses the channel opening lengthwise relative to the intermediate tooth (see fig. 4). Yuzuhara fails to show the outlet aperture opens into a groove which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth and the channel opening laterally on an exterior of the intermediate tooth via at least one outlet aperture facing in a direction of an adjacent tooth; the arrangement being formed by a single molded piece. Furusawa discloses an applicator nozzle device (1) comprising an arrangement of teeth (8), at least two of the teeth defining a channel (10) in flow communication with product, the channel opening on an exterior of the at least one tooth via at least one outlet aperture (9), wherein the outlet aperture opens into a groove (11) which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth (see fig.3) and the channel opening laterally on the exterior of the tooth (8, fig. 2) facing in a direction of an adjacent tooth (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the tooth with the outlet aperture opens to the free extremity of the tooth and the groove configuration as taught by Furusawa into the hollow tooth of Yuzuhara in order to provide maximum strength and ability to penetrate

hair of the user. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the arrangement being single molded material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Yuzuhara in view of Furusawa discloses the arrangement being configured so as to present an obstacle to product flowing from at least one outlet aperture beyond the first and second end teeth. In regard to claims 9-10, 18-22, 47-48, 56-60, 68-69, 78-82, Yuzuhara shows the attachment portion comprising screw threading configured to engage with screw threading on a neck (at 42, 44, fig. 3) of the receptacle and the product contained within the receptacle being a hair product. In regard to claims 23, 61, 83, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct a deformable material for the receptacle, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. In regard to claims 41, 45-46, 64, Yuzuhara in view of Furusawa further show the channel opening on the exterior of the at least one tooth via two outlet apertures (at 116 on both sides of each tooth, fig. 4, Yuzuhara) facing in opposite directions.

Response to Arguments

Applicant's arguments with respect to claims 1, 39, 62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 4/23/08 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732